

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6069L

v.

EUGENE LIBBETT,

Defendant.

Defendant, Eugene Libbett (“Libbett”), has been charged with firearms and narcotics offenses in a four-count indictment. This Court referred all pretrial motions to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636.

The events that form the basis for the indictment occurred on April 21, 2005. Libbett duly filed motions to suppress physical evidence and statements that occurred on the day of his arrest. Magistrate Judge Payson held several days of hearings on defendant’s motions to suppress and took testimony from four officers with the Rochester Police Department as well as the defendant.

Thereafter, Magistrate Judge Payson issued a thorough 19-page Report and Recommendation (Dkt. #48) recommending that Libbett’s motions to suppress statements and physical evidence be denied. Libbett has timely filed objections to that Report and Recommendation and it is, therefore, now before this Court on review.

The Court has reviewed Magistrate Judge Payson's Report and Recommendation and defendant's objections. The transcripts of the suppression hearings have been prepared and were available for my review. Having considered all these items, I adopt Magistrate Judge Payson's Report and Recommendation. I reject the appeal and objections filed by Libbett and find there is no basis to suppress either the evidence seized on April 21, 2005 or the spontaneous statements made at that time by Libbett.

Four Rochester Police Officers testified to a series of events that commenced after Officer James Ingerick began following the vehicle driven by Libbett in a high crime area at about 5 a.m. in the morning. Magistrate Judge Payson's decision summarized the testimony with cogency and in detail as to the relevant evidence. There is no need here to repeat that evidence except to indicate that I find that Magistrate Judge Payson's summary is accurate and fully supported by the record.

The defendant also testified. Much of Libbett's own testimony corroborates the police version of events. He admits not stopping when the pursuing police car activated its emergency lights. He admitted that he was afraid of going to jail, allegedly because he had no driver's license. He admitted stopping the car and fleeing and conceded that he may have left the driver's door open when he did so. He also admitted using cocaine and being under its influence that evening, and he acknowledged that he possessed cocaine when he was arrested and was dressed, with the red "doo-rag," noted by the police, when he was arrested.

Magistrate Judge Payson has advanced several reasons for denying Libbett's motions. I find them all to be persuasive concerning the reasonable nature of the police activity, as well as Libbett's lack of an expectation of privacy as to items in the abandoned vehicle and the shotgun recovered on the grass near where he was apprehended. Based on the observations of Officer Ingerick and the

facts as they developed after Libbett sped from the scene and fled the police, I find nothing unreasonable concerning the officer's activity in following, detaining and searching both Libbett and the vehicle from which he fled.

In addition, I agree with Magistrate Judge Payson that there is no basis to suppress the spontaneous statements made by Libbett when he was arrested and when he was taken to the hospital.

CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Marian W. Payson filed on August 15, 2006 (Dkt. #48). I deny defendant Eugene Libbett's motion to suppress physical evidence and motion to suppress statements.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 13, 2006.